

PENACHIO MALARA LLP  
235 Main Street  
White Plains, NY 10601  
(914) 946-2889

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In re: : Chapter 11 Case No.: 09-22525 (RDD)

:  
RICHARDS CONDITIONING CORP.,

:

Debtor. :

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RICHARDS CONDITIONING CORP., :

Adv. Pro. No.: 10-08408 (RDD)

:

Plaintiff, :

v. :

LAWRENCE P. HOPWOOD.

Defendant. :

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### **PLAINTIFF'S ANSWER TO COUNTER-CLAIM**

**RICHARDS CONDITIONING CORP.**, the plaintiff in the above-captioned adversary proceeding pending in the United States Bankruptcy Court for the Southern District of New York, by and through its attorney, **PENACHIO MALARA LLP**, as and for its answer to the counter-claim of **LAWRENCE HOPWOOD**, Defendant, hereby sets forth as follows:

1. Plaintiff admits the allegation contained in paragraph 4 of the Answer.
2. Plaintiff admits the allegation contained in paragraph 5 of the Answer.
3. Plaintiff denies the allegation contained in paragraph 6 of the Answer.

4. Plaintiff denies the allegation contained in paragraph 7 of the Answer.
5. Plaintiff denies the allegation contained in paragraph 8 of the Answer.
6. Plaintiff denies the allegation contained in paragraph 9 of the Answer.

#### **FIRST AFFIRMATIVE DEFENSE**

7. Defendant repeats and reiterates the allegations set forth in paragraphs 1 through 6 hereof as if set forth in the entity.

8. Plaintiff is precluded from filing a counter-claim because it failed to assert a proof of claim within the time frame prescribed by this Court.

9. As such, Plaintiff is barred from asserting the counter-claim.

#### **SECOND AFFIRMATIVE DEFENSE**

10. Defendant repeats and reiterates the allegations set forth in paragraphs 1 through 9 hereof as if set forth in their entity.

11. Even if there were an agreement between Defendant and Plaintiff, such agreement is void and unenforceable under the applicable Statute of Frauds.

#### **THIRD AFFIRMATIVE DEFENSE**

12. Defendant repeats and reiterates the allegations set forth in paragraphs 1 through 11 hereof as if set forth in their entity.

13. Even if there were an agreement between Defendant and Plaintiff, Defendant cannot compel performance under 11 U.S.C. § 365.

**WHEREFORE**, Plaintiff respectfully requests that the Counter-claim be denied in its entity.

Dated: White Plains, New York  
May 23, 2011

**PENACHIO MALARA LLP**

**/s/ Anne Penachio**

**BY:**\_\_\_\_\_

Anne Penachio, Esq.

Counsel for the Debtor

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